

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 DIANA ROSAS,

4 Plaintiff

5 v.

6 GEICO Casualty Company,

7 Defendant

Case No.: 2:18-cv-01200-APG-NJK

**Order Granting Defendant's Motion to
Dismiss and Denying Defendant's Motion
to Bifurcate and Stay**

[ECF Nos. 6, 7]

8 Plaintiff Diana Rosas sued defendant GEICO Casualty Company (GEICO), alleging four
9 causes of action arising out of GEICO's insurance coverage of her injuries resulting from a car
10 accident. GEICO moves to dismiss claims 2, 3, and 4. ECF No. 6. GEICO alternatively moves
11 to bifurcate and stay claims 2 and 3 pending the outcome of Rosas's breach of contract claim.
12 ECF No. 7.

13 I grant GEICO's motion to dismiss claims 2, 3, and 4 because Rosas's complaint lacks
14 sufficient facts to state those claims. However, I grant Rosas leave to amend her complaint if she
15 can plead sufficient facts to properly state her claims. I deny GEICO's motion to bifurcate and
16 stay those claims.

17 **I. BACKGROUND**

18 Rosas alleges that she was a passenger in a vehicle driven by Kimberly Fox that was rear-
19 ended at a red light. Fox was insured by GEICO. Rosas sustained physical injuries that require
20 continuing medical attention. When GEICO contacted Fox about the collision, Fox informed
21 GEICO that Rosas was in the car and provided GEICO with Rosas's contact information. More
22
23

1 than one year later,¹ GEICO contacted Rosas regarding her coverage under Fox's underinsured
2 motor vehicle policy.² One year after that, Rosas submitted her proof of claim to GEICO. After
3 a medical examination, GEICO valued Rosas's claim at \$28,750. Later, GEICO re-valued
4 the claim at \$50,000. ECF No. 1-1 at 2-11.

5 Rosas alleges that GEICO has not tendered any benefits to Rosas, misrepresented
6 pertinent facts or policy provisions, offered to pay the undisputed portion³ only if Rosas agreed
7 to diminish her rights to extra-contractual claims, intentionally undervalued the benefits owed to
8 her, and that this conduct has caused and continues to cause additional damages.

9 Rosas asserts four causes of action: (1) breach of contract, (2) unfair practices in settling
10 claims in violation of Nevada Revised Statutes § 686A.310, (3) bad faith and breach of the
11 covenant of good faith and fair dealing, and (4) declaratory relief. ECF No. 1-1. GEICO moves
12 to dismiss the extra-contractual claims (2, 3, and 4). ECF Nos. 6, 7.

13 **II. ANALYSIS**

14 In considering a motion to dismiss, "all well-pleaded allegations of material fact are taken
15 as true and construed in a light most favorable to the non-moving party." *Wyer Summit P'ship v.*
16 *Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). Legal conclusions, however, are not
17 entitled to the same assumption of truth even if cast in the form of factual allegations. *Ashcroft v.*

20 ¹ One of more of the dates included in Rosas's allegations must be incorrect, as they do not line
21 up chronologically, and GEICO notes that some of them are before the date of the accident. ECF
No. 6 at 2.

22 ² Rosas alleges that she is insured under GEICO's underinsured motor vehicle policy through a
contract between Fox and GEICO. ECF No. 1-1 at 3.

23 ³ Although it is not clear in Rosas's complaint, I believe that the "undisputed portion" of the
policy refers to the most recent, \$50,000 valuation.

1 *Iqbal*, 556 U.S. 662, 679 (2009). A plaintiff must make sufficient factual allegations to establish
2 a plausible entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007).

3 A claim is facially plausible when the complaint alleges facts that allow the court to draw
4 a reasonable inference that the defendant is liable for the alleged misconduct. *Iqbal*, 556 U.S. at
5 663. Where the complaint does not permit the court to infer more than the mere possibility of
6 misconduct, the complaint has “alleged—but it has not shown—that the pleader is entitled to
7 relief.” *Id.* at 679 (internal quotation marks and citation omitted). When the claims have not
8 crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550
9 U.S. at 570. “Determining whether a complaint states a plausible claim for relief will . . . be a
10 context-specific task that requires the [district] court to draw on its judicial experience and
11 common sense.” *Iqbal*, 556 U.S. at 679.

12 **A. Unfair Settlement Practices (Claim 2)**

13 Under Nevada Revised Statutes § 686A.310, an insurer is liable for damages if it engages
14 in any of various enumerated acts. Rosas asserts that GEICO violated several provisions in
15 § 686A.310 but simply recites the language of those provisions without providing sufficient
16 supporting factual allegations. It is not clear that GEICO has unduly delayed payment of
17 benefits to Rosas, particularly considering the length of time Rosas took to submit her proof of
18 claim; it is not clear that GEICO did not conduct a reasonable investigation; Rosas does not
19 explain how GEICO misrepresented pertinent facts or policy provisions; and she did not provide
20 any detail regarding how GEICO undervalued her claim, other than to include the amount of its
21 offer and simply allege that it was intentionally undervalued. Reciting the elements of a cause of
22 action is insufficient to state a claim. I therefore grant GEICO’s motion and dismiss Rosas’s
23 claim for violations of § 686A.310, without prejudice.

1 **B. Bad Faith and Breach of the Covenant of Good Faith and Fair Dealing (Claim 3)**

2 Under Nevada law, “[e]very contract imposes upon each party a duty of good faith and
3 fair dealing in its performance and execution.” *A.C. Shaw Constr. v. Washoe Cty.*, 784 P.2d 9, 9
4 (Nev. 1989) (quoting Restatement (Second) of Contracts § 205); *see also Nelson v. Heer*, 163
5 P.3d 420, 427 (Nev. 2007) (“It is well established that all contracts impose upon the parties an
6 implied covenant of good faith and fair dealing, which prohibits arbitrary or unfair actions by
7 one party that work to the disadvantage of the other.”). “The implied covenants of good faith
8 and fair dealing impose a burden that requires each party to a contract to refrain from doing
9 anything to injure the right of the other to receive the benefits of the agreement.” *Shaw v.*
10 *CitiMortgage, Inc.*, 201 F. Supp. 3d 1222, 1251 (D. Nev. 2016) (quotation omitted).

11 To establish a claim for breach of the implied covenant of good faith and fair dealing, a
12 plaintiff must prove: (1) the existence of a contract between the parties; (2) that the defendant
13 breached its duty of good faith and fair dealing by acting in a manner unfaithful to the purpose of
14 the contract; and (3) the plaintiff’s justified expectations under the contract were denied. *See*
15 *Perry v. Jordan*, 900 P.2d 335, 338 (Nev. 1995) (citing *Hilton Hotels Corp. v. Butch Lewis*
16 *Prod., Inc.*, 808 P.2d 919, 922–23 (Nev. 1991)).

17 As with her claim for unfair settlement practices, Rosas does little more than recite the
18 elements required to establish bad faith. While the complaint plainly alleges that there is a
19 contract between the parties, it does not provide sufficient facts for me to plausibly infer that
20 GEICO acted in a manner unfaithful to the purpose of that contract or that her justified
21 expectations were denied. As with her claim for violation of unfair practices, it is not clear that
22 GEICO has unduly delayed payment of benefits to Rosas, and she does not provide any detail
23 about how GEICO undervalued her claim. I therefore grant GEICO’s motion and dismiss

1 Rosas's claim for bad faith and breach of the covenant of good faith and fair dealing, without
2 prejudice.

3 **C. Declaratory Relief (Claim 4)**

4 GEICO moves to dismiss Rosas's fourth cause of action, arguing that declaratory relief is
5 only available when there is a dispute about the existence and coverage of the insurance contract.
6 ECF No. 6 at 4. It contends that "there are no contractual coverage issues" in this case, so the
7 specific contractual obligations of the parties can be determined in the cause of action for breach
8 of contract, and declaratory relief is therefore duplicative and unnecessary. *Id.* Rosas does not
9 respond to this portion of the motion.⁴

10 Claims for declaratory relief frequently accompany claims for breach of insurance
11 contracts and are used to determine whether coverage exists in a given insurance policy. *El*
12 *Capitan Club v. Fireman's Fund Ins. Co.*, 506 P.2d 426, 428 (Nev. 1973); *see also De La Paz*
13 *Enterprises v. Nat'l Fire Ins. Co. of Hartford*, 2:08-cv-00813-BES-RJJ, 2009 WL 10693512, at
14 *5 (D. Nev. Feb. 10, 2009). However, "the declaratory relief statute should not be used for the
15 purpose of anticipating and determining an issue which can be determined in the main action,"
16 but is instead most appropriate when it would be beneficial to make an early determination of
17 coverage under the policy. *El Capitan Club*, 506 P.2d 428 (quotations omitted).

18 Here, there appears to be no dispute regarding the existence of a valid insurance contract
19 between GEICO and Fox, according to which Rosas was insured. GEICO's behavior up to this
20 point and the content of its filings suggest that it agrees that there is a contract. Instead, the
21 dispute in this case is about what specifically is owed under that contract, an issue that can be

22
23 ⁴ This is possibly due to the fact that GEICO's arguments on this issue are embedded in the
factual and procedural history section in their motion, as opposed to the law and argument
section, which focuses exclusively on the second and third causes of action.

1 determined through Rosas's main contractual action. Because Rosas does not allege any
2 contractual disputes that cannot determined in that main action, I grant GEICO's motion to
3 dismiss the action for declaratory relief, without prejudice.

4 **D. Geico's Motion to Bifurcate and Stay**

5 As an alternative to dismissal, GEICO moves to have claims 2 and 3 bifurcated and
6 stayed, pending the resolution of her claim for breach of contract. It argues that doing so will
7 further the interests of judicial economy, fairness to the parties, and clarity to jurors if this
8 dispute continues to trial. ECF No. 7 at 16-19. Rosas responds that bifurcating and staying those
9 claims would unnecessarily multiply proceedings and cause unnecessary delay, especially if
10 done before the conclusion of discovery. ECF No. 9 at 12-14.

11 Rule 42(b) of the Federal Rules of Civil Procedure authorizes courts to order a separate
12 trial of any claim when separation is in the interest of judicial economy, will further the parties'
13 convenience, or will prevent undue prejudice. Fed. R. Civ. P. 42(b). The decision to bifurcate is
14 committed to the discretion of the trial court. *Hirst v. Gertzen*, 676 F.2d 1252, 1261 (9th Cir.
15 1982). Bifurcation is particularly appropriate when resolution of a single claim or issue could be
16 dispositive of the entire case. *Drennan v. Maryland Cas. Co.*, 366 F. Supp. 2d 1002, 1007 (D.
17 Nev. 2005) (citing *O'Malley v. United States Fid. & Guar. Co.*, 776 F.2d 494, 501 (5th Cir.
18 1985)). "However, bifurcation of the trial does not necessarily require bifurcation of discovery."
19 *Id.*

20 There is no reason to bifurcate or stay Rosas's second and third claims at this stage.
21 Rosas's claims are intertwined, so separating and staying at this time would unnecessarily
22 prolong the process and waste judicial resources supervising two phases of discovery. I
23

1 therefore deny GEICO's motion to stay and bifurcate. If GEICO feels bifurcation is prudent at
2 some later stage of this case, it may move again at that time.

3 **E. Rosas's Request for Leave to Amend**

4 In her response to Geico's motion to dismiss, Rosas seeks leave to amend her complaint
5 to supplement her factual allegations if needed. ECF No. 9 at 7-9. In reply, GEICO contends
6 that Rosas has not identified any additional facts that could be alleged in an amended complaint,
7 so amendment would be futile and dismissal should be with prejudice. ECF No. 10 at 5-6.

8 Rule 15 requires district courts to "freely give leave [to amend] when justice so requires."
9 Fed. R. Civ. P. 15(a)(2). This policy is "to be applied with extreme liberality." *Eminence Capital*
10 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (quotation omitted). "[A] district court
11 should grant leave to amend even if no request to amend the pleading was made, unless it
12 determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez*
13 *v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (quotation omitted). Amendment is futile only if
14 no set of facts can be proven under the amendment that would constitute a valid and sufficient
15 claim. *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988).

16 Amendment would not be futile in this case. Rosas contends she has additional facts to
17 support her claims, and GEICO does not argue that no facts exist to make out a valid claim. I
18 therefore grant Rosas leave to amend.

19 **III. CONCLUSION**

20 IT IS THEREFORE ORDERED that GEICO's motion to dismiss the complaint (**ECF**
21 **No. 6**) is **GRANTED**. Counts two, three, and four are dismissed without prejudice.

22 IT IS FURTHER ORDERED that Rosas may file an amended complaint, consistent with
23 this order, within 21 days of entry of this order.

1 IT IS FURTHER ORDERED that Geico's motion to sever and stay Rosas's extra-
2 contractual claims (**ECF No. 7**) is **DENIED**.

3 DATED this 19th day of March, 2019.

4
5 

6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23